jurisdiction, once more brings this court into line with the rule as it is generally laid down regarding this question.

PARENT AND CHILD—MARRIAGE NOT AN EMANCIPATION.—Plaintiff and defendant, both being minors above the age of consent, were married, and plaintiff (the wife) afterward secured a decree of divorce and temporary alimony. The defendant had no property, and his father claimed and received his wages and services. Consequently he failed to pay the alimony. *Held*, that he was not in contempt for the failure. *Austin* v. *Austin* (Mich. 1911) 132 N. W. 495.

This case has been criticised as opposed to the great weight of authority, which holds that "the lawful marriage of an infant, whether with or without the parent's consent, entitles the infant to his earnings for the support of his family." 25 HARV. L. REV. 295. This statement of the rule seems rather too broad. Of the two cases cited as illustrative of the weight of authority, the first, *Commonwealth* v. *Graham*, 157 Mass. 73,31 N.E. 706,while opposed to the principal case, does not hold that the infant is fully emancipated by marriage, but only that "an infant husband is entitled to his own wages so far as they are necessary for his own support and that of his wife and children." The second, *Aldrich* v. *Bennett*, 63 N. H. 415, is not in point on this question, the emancipation there being that of a female infant. Courts have been willing to hold that marriage emancipates a female infant, *Aldrich* v. *Bennett*, *supra*, and that a male infant is emancipated where his father has consented to the marriage, *Inhabitants of Taunton* v. *Inhabitants of Plymouth*, 15 Mass. 203. Further they have allowed him necessaries for the support of himself and his family. *Commonwealth* v. *Graham*, *supra*; *Inhabitants of Taunton* v. *Inhabitants of Plymouth*, *supra*. But no court, apparently, has held that a male infant is fully emancipated by marriage without his parent's consent. The textbooks state with substantial uniformity, that marriage does emancipate. TIFFANY, DOM. REL., Ed. 2, 282, but the cases cited do not support the text statement. A line of cases in Vermont is often cited to support the emancipation doctrine: *Town of Bradford* v. *Town of Lunenburgh*, 5 Vt. 481; *Town of Sherburne* v. *Town of Hartland*, 37 Id. 528; *Town of Northfield* v. *Town of Brookfield*, 50 Id. 62. These cases all arose under the pauper laws, and the question was only as to what constituted emancipation under those laws, *Town of Sherburne* v. *Town of Hartland*, *supra*. Furthermore the two latter of these cases base their decisions on a statement in the earliest case which is but *dictum*. The only cases exactly in point seem, then, to be *Com.* v. *Graham*, *supra*, *White* v. *Henry*, 24 Me. 531 and *People* v. *Todd*, 61 Mich. 234, 28 N.W. 79. It is the rule in the two latter of these cases which the Michigan court has adopted in the principal case.

SERVICE OF SUMMONS—FALSE RETURN—REMEDY.—In an action to enjoin a levy and sale under an execution issued on a judgment rendered by a justice of the peace, and to have the judgment declared null and void, because based upon a false return of service of summons. *Held*, that the return of the officer showing a service of summons in the manner pre-

scribed by the statute is conclusive upon the parties to the suit, and a judgment by default rendered in pursuance of such return cannot be attacked even in equity except where the plaintiff aided or abetted in the false return. *Ellis* v. *Nuckols* (Mo., 1911), 140 S. W. 867.

The conclusiveness of an officer's return of service of summons, and what remedy one injured by a false return of service may have either at law or in equity are questions which have been carefully considered by the courts with the result of an irreconcilable conflict of opinion. *Reiger* v. *Mullins*, 210 Mo. 563. In a note to this case in 124 Am. St. Rep. 755, the authorities are extensively reviewed. The rule stated in the principal case, that a judgment cannot be impeached in equity when it appears that the officer's return of service is false and no return of service has been made finds support in some of the American cases. *Walker* v. *Robbins*, 14 How. 584; *Taylor* v. *Lewis*, 2 J. J. Marsh. 400, 19 Am. Dec. 135; *Knox* v. *Harshman*, 133 U. S. 152; *Johnson* v. *Jones*, 2 Neb. 126. These cases proceed upon the theory that where the plaintiff in law is not in fault, redress can only be had in the court of law where the record was made, and if relief cannot be had there the party injured can seek his remedy against the officer in an action for damages for the false return; there thus being an adequate remedy at law. *Preston* v. *Kindrick*, 94 Va. 760; *Krug* v. *Davis*, 85 Ind. 309. The injustice of this rule is well illustrated by the principal case, in which the defendant by his demurrer admitted that the damages to the plaintiff were such as not to be capable of computation, that the officer was insolvent, and that the signatures of the sureties on the officer's bond were forgeries. These facts being true, it is evident that if the plaintiff has a remedy at law it is anything but adequate. *Owens* v. *Ranstead*, 22 Ill. 161. One of the strongest criticisms of the refusal of courts to grant relief in such a case is found in the note to the case of *Taylor* v. *Lewis*, *supra*, in 19 Am. Dec. 135, where it is said by Mr. FREEMAN, "It would seem to be * * * self evident * * * that no greater fraud can be perpetrated than to deprive a person of his property without giving him an opportunity to be heard in his defense. To do so is repugnant to our sense of natural justice and opposed to the underlying principles of free governments deriving their authority from written constitutions, and is seldom if ever sanctioned except where might and not right prevails." Where relief is allowed against such judgments there is some diversity of opinion as to what must be shown to impeach the judgment. Generally it is held that it must be shown that a different result will be obtained than was decreed by the void judgment, as by showing that there was a valid defense, either partial or entire to the former action. *Gifford* v. *Morrison*, 37 Ohio St. 502, 41 Am. Rep. 537; *Young* v. *Deenen*, 220 Ill. 350, 70 N. E. 193; FREEMAN, JUDGMENTS, Ed. 4, § 498, and cases cited. In some cases relief has been granted without showing a meritorious defense, *Bell* v. *Williams*, 1 Head. 229; *Ridgeway* v. *Bank of Tennessee*, 11 Humph. 523. Evidence to impeach a false return must be clear and cogent, *Osman* v. *Wisted*, 78 Minn. 295; *Huntington* v. *Crouter*, 33 Ore. 408, 54 Pac. 208, 72 Am. St. Rep. 726. There is conflict as to whether the testimony of the plaintiff is sufficient to overcome the return of service. *Tatum* v. *Curtis*, 68 Tenn. 360; *Davant* v. *Carlton*, 53 Ga. 491.

It was held in *Trager* v. *Webster*, 174 Mass. 580, 55 N. E. 318, that a return of service might be overthrown by the uncorroborated testimony of the plaintiff. The trend of the modern cases seems to be towards the doctrine that the return of an officer to a writ is only *prima facie* evidence of the facts stated therein, and that when a judgment had been obtained by means of a false return and without notice to the defendant, equity will grant relief. *Kochman* v. *O'Neil*, 202 Ill. 110; *Wilcke* v. *Duross*, 144 Mich. 243, 107 N. W. 907, 115 Am. St. Rep. 394; *Goble* v. *Brennenman*, 75 Neb. 309; *Emerson* v. *Gray* (Del. Ch.), 63 Atl. 768; *DuBois* v. *Clark*, 12 Colo. App. 220, 55 Pac. 750.

TAXATION—ESTOPPEL TO RAISE CONSTITUTIONAL QUESTION.—A landowner signed a petition asking for the construction of a ditch, knew of the procedure in its establishment, saw the ditch being constructed, acquiesced in its location, and made no protest until called upon to pay his assessment. He then instituted an action to restrain defendant from enforcing and collecting the assessment against his land on the ground that the law under which the ditch was constructed was unconstitutional. *Held*, that the plaintiff, by his actions, is estopped from questioning the constitutionality of the law under which the ditch was constructed. *De Noma* v. *Murphy et al.* (S. D., 1911), 133 N. W. 703.

Often a law will be held valid which otherwise might have been held invalid, if the party making the objection had not by prior acts precluded himself from being heard in opposition. *Pierce* v. *Somerset Ry.*, 171 U. S. 641, 43 L. Ed. 316. 8 CYC. 791. This rule is almost universally applied to property rights, and is even applied to a limited extent to criminal law. COOLEY, CONSTITUTIONAL LIMITATIONS, Ed. 7, p. 250. It has been accepted by practically all of the States. COOLEY, TAXATION, Ed. 2, p. 819; *Ferguson* v. *Landram*, 5 Bush 230, 96 Am. Dec. 350; *Andrus* v. *Board of Police*, 41 La. Ann. 697, 6 South. 603, 5 L. R. A. 681; *Dupre* v. *Board of Police*, 42 La. Ann. 802, 8 South, 593; *People* v. *Murray*, 5 Hill 468; *Minneapolis, St. P. & S. St. M. Co.* v. *Nester*, 3 N. D. 480, 57 N. W. 510; *State* v. *Mitchell*, 31 Ohio St. 592. The plaintiff in the principal case, or any one in an analogous position, is, theoretically at least, not affected by the unconstitutionality. Provisions of constitutions which would apply in such cases are intended to protect the citizen from forced contributions levied *in invitum* beyond any power possessed by the authorities. The plaintiff cannot be considered as subject to an act *in invitum* because of his previous actions. The facts necessary to constitute a waiver of the right to raise the question of unconstitutionality, varies in the different jurisdictions. The general view is well illustrated by the Ohio decisions. Mere silence, even with knowledge of conditions, is not sufficient in itself. *Counterman* v. *Dublin Tp.*, 38 Ohio St. 515. Even signing the petition, if nothing more appears, may not be sufficient, *Tone* v. *Columbus*, 39 Ohio St. 281. (But see *City of Columbus* v. *Sohl*, 44 Ohio St. 479, 8 N. E. 299), though such persons might be estopped from enjoining the collection of assessments of costs proceeding from the petition proceedings themselves. A few courts give the rule a wide range; for example, even carrying it on to persons purchasing land with its burdens, where such land has been bene-